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No. 422

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

CITY OF KANSAS CITY, MISSOURI, A MUNICIPAL CORPORATION, *Petitioner*,

v.

FEDERAL PACIFIC ELECTRIC COMPANY AND GENERAL ELECTRIC COMPANY, *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF AMICI CURIAE OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS IN SUPPORT OF PETITION FOR CERTIORARI

Counsel

JOHN C. MELANIPHY,
Corporation Counsel,
Chicago, Illinois.

DAVID BERGER,
City Solicitor,
Philadelphia, Pennsylvania.

J. ELLIOTT DRINARD,
City Attorney,
Richmond, Virginia.

JOHN J. FLEMING,
City Attorney,
Milwaukee, Wisconsin.

ROBERT REESE,
Corporation Counsel,
Detroit, Michigan.

LEO A. LARKIN,
Corporation Counsel,
New York, New York.

RALPH S. LOCHER,
Director of Law,
Cleveland, Ohio.

CHARLES S. RHYNE,
LENOX G. COOPER,
ANTHONY L. JOSEPH,
Rhyne & Rhyne,
400 Hill Building,
Washington, D. C.

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INTEREST OF AMICI CURIAE

The National Institute of Municipal Law Officers (hereafter referred to as "NIMLO") is composed of over 1200 municipalities located in each of the 50 states, Puerto Rico, and the District of Columbia. These municipalities have filed over 500 complaints in 20 Federal Courts and many of them have joined together in a cooperative effort to press their treble-damage actions under the Clayton Act (15 U.S.C. § 15) following the criminal and civil injunctive proceedings brought by the United States Government in 1960 against certain manufacturers of electrical equipment, including the defendants herein. This cooperative endeavor is designed to save time and expense and to relieve burdens

matter would scarcely have been raised by the defendants in many District Courts.

2. As a further reason for immediate treatment of the limitation issue, this Court should recognize the increasingly heavy burden which has been and will continue to be thrust upon the Federal judiciary as each of the 25 District Courts, where treble damage cases are now on file, is in turn asked by the defendants to interpret Section 4B of the Clayton Act.[1] This is underscored and highlighted by the fact that (as *Amici Curiae* Westinghouse Electric Corporation and Allis-Chalmers Manufacturing Company point out, at p. 5 of their Brief) *seven* District Courts have had to decide motions to strike material from the plaintiffs' complaints on the ground that Section 4B of the Clayton Act is not tolled by fraudulent concealment. As the *Amici Curiae* Brief also points out (at p. 5), *three* of the District Courts, which have had the question before them, decided in favor of the defendants, while *four* other District Courts have decided to the contrary, for the plaintiffs. Thus, a patent conflict exists among the District Courts.[2] Judge Robson, of the Northern District of Illinois, in recently determining the effect of fraudulent concealment on the Clayton Act, has pointed to this conflict by saying that "This Court realizes the importance of this aspect of the litigation and the *Contrariety of judicial views* and would welcome and recom-

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[1] Such judicial effort involves, of course, subsequent appellate review of each lower court decision, with all the resulting effort necessarily associated with such a series of appeals.

[2] A new element in the conflict has been added by the decision of the United States Court of Appeals for the 8th Circuit, which on November 6, 1962, reversed the opinion of the lower court, the Western District of Missouri, in the instant case. *City of Kansas City, Missouri* v. *Federal Pacific Electric Company and General Electric Company*, Nos. 17,117 and 17,118, 8th Cir., November 6, 1962.

mends an immediate review of this determination on appeal." (Emphasis supplied.) (Slip Opinion, p. 11, *Commonwealth Edison Co.* v. *Allis-Chalmers Mfg. Co.*, Civ. No. 61 C1277, N.D. Ill., August 28, 1962.) Complementing this judicial statement is another by Judge Arraj of the District of Colorado, who, in *Public Service Co. of Colorado* v. *Allen-Bradley Co.*, emphasized the positive nature of the widely divergent judicial views on the association of fraudulent concealment and Section 4B in his statement that "Both lines of reasoning set forth in these decisions . . . provide a strong justification for adopting either alternative in this highly important litigation." (Slip Opinion, p. 4, Civ. No. 7349, D. Colo., September 21, 1962.)

If the issue is not resolved now by this Court, the respondents and *amici curiae* will force a substantial portion of the judicial machinery of this country to be laboriously and indefinitely involved with rulings on the doctrine of fraudulent concealment as it applies to the Clayton Act. This will present the real threat of a continuing interference with other litigation. Such a result is totally undesirable and can be avoided if this Court settles the matter at this time.

Conclusion

In view of the foregoing reasons, the Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

JOHN C. MELANIPHY,
Corporation Counsel,
Chicago, Illinois.

DAVID BERGER,
City Solicitor,
Philadelphia, Pennsylvania.

J. ELLIOTT DRINARD
City Attorney,
Richmond, Virginia.

JOHN J. FLEMING,
City Attorney,
Milwaukee, Wisconsin.

ROBERT REESE,
Corporation Counsel,
Detroit, Michigan.

LEO A. LARKIN,
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